88-419

No. _____

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1988

JOHN JOSEPH GRABNER, III

Petitioner,

vs.

LAWRENCE CONTI

Respondent.

PETITION FOR WRIT OF CERTIORARI DIRECTED TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

ALLEN N. BRUNWASSER,
Attorney for Petitioner

P.O. Box 22212
Pittsburgh, PA 15222
(412) 391-0329

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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STATEMENT OF QUESTION PRESENTED FOR REVIEW

If a state's statutes and constitution direct there shall be no right or harm without a remedy and the state actually provides no remedy, in fact, is a United States Court available to provide the remedy the state promised but did not give?

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No. _____

In The

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JOHN JOSEPH GRABNER, III

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vs.

LAWRENCE CONTI

Respondent.

PETITION FOR WRIT OF CERTIORARI DIRECTED TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

John Joseph Grabner, III respectfully presents this petition for allowance of certiorari to the United States Court of Appeals for the Third Circuit.

REFERENCE TO OFFICIAL AND UNOFFICIAL REPORTS OF THE OPINIONS DELIVERED IN THE COURTS BELOW

On July 24, 1987, Petitioner filed his complaint in the United States District Court for the Western District of Pennsylvania at C.A. 87-1545 (la to 12a).

On August 19, 1987, Respondent filed a motion to dismiss which said "the complaint fails to state a claim against the Defendant upon which relief can be granted" and because of "lack of subject matter jurisdiction".

On October 2, 1987, the District Court (Alan N. Bloch, D.J.) dismissed the case (16a) and filed an opinion (13a to 16a).

On October 13, 1987, Petitioner filed a motion for reconsideration and for leave to amend (17a to 19a).

On October 14, 1987, the motion was denied and leave to amend refused (24a) without opinion.

On November 13, 1987, Petitioner filed a timely notice of appeal to the United States Court of Appeals for the Third Circuit.

On June 17, 1988, the United States Court of Appeals affirmed by a "Judgment Order" (29a, 30a) without allowing oral argument and without opinion.

On August 29, 1988, Petitioner filed a motion for rehearing and rehearing en banc.

On July 12, 1988, the motion was denied without opinion (31a, 32a).

JURISDICTION

Jurisdiction to petition for certiorari is founded upon 28 U.S.C. 1254 (1).

CONSTITUTIONAL PROVISIONS, STATUTES AND ORDINANCES INVOLVED

Article 1, Section 1 of Pennsylvania Constitution: Inherent Rights of Mankind.

Section 1. "All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness."

Article 1, Section 11 of Pennsylvania Constitution: Courts to be open; suits against the Commonwealth.

Section 11. "All courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law, and right and justice administered without sale, denial or delay. Suits may be brought against the Commonwealth in such manner, in such courts and in such cases as the Legislature may by law direct."

Article 1, Section 20 of Pennsylvania Constitution: Right of Petition.

Section 20. "The citizens have a right in a peaceable manner to assemble together for the common good, and

to apply to those invested with the powers of government for redress of grievances or other proper purposes, by petition, address or remonstrance."

Article 1, Section 26 of the Pennsylvania Constitution: Subdivisions: No Discrimination by Commonwealth or its Political Subdivisions.

Section 26: "Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right."

First Amendment to United States Constitution:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

Fifth Amendment to United States Constitution:

"No person shall be deprived of life, liberty, or property, without due process of law; –"

Ninth Amendment to United States Constitution:

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

Fourteenth Amendment to United States Constitution:

Section 1. "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which

shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

42 Pa. C.S.A. 5101 (a):

"Remedy to exist for legal injury.

(a) General Rule - Every person for a legal injury done him in his lands, goods, person or reputation shall have remedy by due course of law, and right and justice administered without sale, denial or delay."

23 Pa. C.S.A. 102 (The Pennsylvania Divorce Code of 1980).

"*Section 102.* Legislative findings and intent.

(a) The family is the basic unit in society and the protection and preservation of the family is of paramount public concern."

CONCISE STATEMENT OF THE CASE CONTAINING THE FACTS MATERIAL TO THE CONSIDERATION OF THE QUESTION PRESENTED

Since this case never went beyond the pleading stage, all necessary facts are contained in the foregoing reference to what was done previous to this petition.

REASONS FOR ALLOWANCE OF THE WRIT

SUMMARY OF ARGUMENT

The constitution and statutes of the Commonwealth of Pennsylvania specifically protect reputation and marriage and provide a promised remedy for damages to reputation. *Sprague v. Walters,* May 31, 1988, ___ Pa. ___, 543 A.2d 1078, 1084.

However, at least in this case, the promised protections and remedies were denied in the Pennsylvania Courts at all levels.

Attempt to proceed under 42 USC 1983 and because there was no state remedy was improperly foreclosed by the District Court which said the numerous allegations of outrageous police conduct (including outlawry and banishment) only amounted to the tort of alienation of affections with which this Jurist had no obligation to interfere.

ARGUMENT

1. When the Chief ordered Husband to stay out of Monaca Borough, he created a 42 USC 1983 cause of action by the specific provisions of *Appeal of Baranyai,* 1981, C.A.3, 659 F.2d 306 (en banc, 8 Judges).

A. Complainants there obtained an injunction against all interference with their constitutional right to travel (659 F.2d at 312, N.7) and

B. Protection against "unlawful harassment of persons lawfully on the streets of Millvale" and

C. "Unlawful orders to persons to stay out of Millvale" (659 F.2d at 320).

D. The lower court, affirmed on appeal, took up (480 F. Supp. 686, 699) "outlawry and banishment" (after making its Page 689 finding #22 that Plaintiff was "told to stay out of Millvalle") and instructed the reader that:

> "In this particular case, there is no authority in law for an individual policeman to take it upon himself to determine which person should be subject to a de facto sentence of banishment. We hold in this respect there is a violation of the constitutional rights of United States citizens to move freely within the confines of this country."

E. The United States Supreme Court has also protected the right to stay in town against officials who want to keep the protesting party out.

(1) *Hague v. Committee for Industrial Organization*, 1983, C.A.3, 101 F.2d 774, modified and reversed on OTHER GROUNDS, 59 S. Ct. 954, 307 U.S. 496 advised exclusion of complainants "from the territorial limits of Jersey City" interfered with their right of free locomotion on and free access to the public streets and parks of Jersey City (101 F.2d at 780) and thus violated

a. The 14th Amendment and

b. The Commerce Clause (Article 1, Section 8, Clause 3) and

c. Article 1, Section 1 of the United States Constitution ("no state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States") and

d. The Civil Rights Act (id. at 789) and

e. Punitive damages at a Jury Trial were proper and

f. So was an injunction (racially motivated action to keep civil rights workers out of town).

(2) *Griffin v. Breckenridge,* 1971, 403 U.S. 88, 105-106, 91 S. Ct. 1790, 1800 advised "our cases have firmly established that the right of interstate travel is constitutionally protected, does not rest on the fourteenth amendment, as is assertable against private as well as government interference".

F. *Lewis v. Kugler,* 1971, C.A.3, 446 F.2d 1343, 1350 observed that a money verdict against a policeman is usually worthless and remanded for proper 42 USC 1983 injunctive relief to stop an intentional pattern of commerce clause violating conduct by State Troopers against long hair on the highway types.

2. The Chief's outrageous conduct brings Plaintiff within the protections and damage provisions of 42 USC 1983.

A. When a policeman improperly draws his gun, points it, and threatens to shoot, the pointee plus the person in the line of fire have endured the excessive force and "shocks the conscience" experience that generates a 42 USC 1983 lawsuit; *Black v. Stephens,* September 28, 1981, C.A.3, 662 F.2d 181, 185-189, C.D. 102 S. Ct. 1646, 455 U.S. 1008.

(1) Husband not only complains about what the Chief did to his Wife (2-a to 10-a) but

(2) Was himself the direct target of the Chief's threats:

a. "Plaintiff was afraid to deal with Defendant directly because he carried a gun and badge and had the power to shoot to wound or kill plus the power of arrest" (Paragraph 5-B, 2-a) and

b. "The Chief ignored Plaintiff's request to let his Wife alone -" (Paragraph 5-F (11), 7-a) and

c. "The Chief has also made threats to Plaintiff and Plaintiff is afraid he will carry them out" (Paragraph 5-F (15), 10-a).

B. Husband respectfully urges this United States Supreme Court to rule that he is at least in the *Black v. Stephens* line of fire in re action taken against his Wife, that he has also suffered direct damage and that what the Chief has done is sufficiently outrageous to rise above a mere tort and reach the protections of 42 USC 1983.

C. Unjustified intentional Police physical attacks offend 42 USC 1983; *Davidson v. O'Lone*, 1984, C.A.3, 752 F.2d 817 (en banc, 9 Judges), affirmed 106 S. Ct. 668, 670.

(1) Although this case denied relief for the mere negligence of Prison Guards who did not protect plaintiff against attack by fellow inmates, it advised of a different holding if there was "an unjustified attack by Prison Guards themselves" and suggested the reader "see *Johnson v. Glick*, 481 F.2d 1028 (C.A.2)".

(2) *Johnson* held threats to physically harm and beatings rise beyond push and shove torts and are covered by 42 USC 1983 as a 14th Amendment due process violation (481 F.2d at 1031) and deprivation of a "liberty

without the due process of law" (id. at 1032) and the Civil Rights Act.

D. After observing that the perimeters of "Police brutality" have not yet been defined (*Howell v. Cataldi*, 1972, C.A.3, 464 F.2d 272, 281) Judge (later Chief Judge) Aldisert advises it "violates standards of decency more or less universally accepted" (id. at 282) and that a party who argues with a policeman usually gets arrested and thus needs a court to make his points instead of risking giving them directly to the officer (id. at 275, citing *Bivens*, 403 U.S. at 394-5, 91 S. Ct. at 2004).

E. *Curtis-Everette*, 1973, C.A.3, 489 F.2d 516, 518 (C.D. 416 U.S. 995, 99 S. Ct. 1151) quotes and approves what Judge Aldisert said about intentional conduct and also affirms that the intent need not cover a desire to offend constitutional rights.

3. As indicated, supra, Brief Pages 2-4, Commonwealth of Pennsylvania provides a remedy for all wrongs and specifically mentions "reputation" in Article 1, Sections 1 and 11 (see *Couglin v. Westinghouse Broadcasting and Cable, Inc.*, 1985, C.A.3, 780 F.2d 340, 345 – "reputation was Put in the same constitutional footing as life, liberty, and property", "and it is therefore understandable that the Pennsylvania Constitution creates a right in reputation which the judiciary is bound to protect") and 42 Pa. C.S.A. 5101 (a) and "protection and preservation of the family" in 23 Pa. C.S.A. 102 (a); *Appeal of Metzger*, March 11, 1988, C.A.3, 841 F.2d 518; *Copeland v. Phila. Police Dept.*, March 7, 1988, C.A.3, 840 F.2d 1139, 1148 (reputation a liberty interest if plaintiff proves publication); *Strum v. Clark*, 1987, C.A.3, 835 F.2d 1009, 1012

(state can elevate reputation to a liberty interest "by according it protection beyond that contained in its tort law").

A. Husband filed the state suits to protect these interests, but the promised remedies were denied in the state courts and in the federal district court as well (see also "Motion to Amend Civil Complaint", 41-a to 45-a, which attempted to expand federal case area of adjudication and together with the Motion for Reconsideration (37-a) cited additional law).

B. *Paul v. Davis*, 1976, 424 U.S. 693, 709, 96 S. Ct. 1155, 1164 makes available a 42 USC 1987 remedy when loss of reputation unproceeded by due process, is an adjunct of a separate state created liberty interest and

(1) Advised this includes "matters relating to marriage, procreation, contraception, family relationships, and chi1d rearing –" which

(2) Are protected by the 1st, 4th, 5th, 9th and 14th Amendments (424 U.S. at 713, 96 S. Ct. at 1166).

C. *Zablocki v. Redhail*, 1978, 434 U.S. 374, 381, 98 S. Ct. 673, 678 after advising that "strict scrutiny" is applied in any restriction on "a fundamental right, the right to marry" observed marriage to be

(1) "Essential to the orderly pursuit of happiness by free men" (id. 383/679) and

(2) "Fundamental to our very existence or survival" (id. 383/679) and

(3) "The right to marry, establish a home and bring up children" is a central part of the liberty protected by the due process clause" "fundamental to the very existence and survival of the race" (id. 680/384) and

(4) "The right to marry is part of the fundamental "right of privacy" implicit in the fourteenth amendment; due process clause" and "older than the Bill of Rights" (id. 620/384) and

(5) "Sacred" (id. 385/680) and

(6) "Freedom of personal choice in matters of marriage and family life is one of the liberties protected by the due process clause of the fourteenth amendment", citing *Paul* supra, (id. 621/386).

D. *Wisconsin v. Constantineau*, 1971, 400 U.S. 433, 437, 91 S. Ct. 507, 510; *Board of Regents of State College v. Roth*, 1972, 408 U.S. 564, 573, 92 S. Ct. 2701, 2707; *Doe v. McMillan*, 1973, 412 U.S. 306, 309, 93 S. Ct. 2018, 2033 and *Goss v. Lopez*, 1975, 95 S. Ct. 729, 736, 419 U.S. 565, 574 all stress due process protection of "a person's good name, reputation, honor, or integrity".

(1) Although *Paul v. Davis*, supra, appears to qualify the broad coverage of these cases by requiring they be tied in with destruction of a state recognized liberty interest, Husband respectfully urges the Supreme Court to rule that he has met this additional qualification for federal relief.

(2) Husband's federal complaint (1-a to 11-a) plus its proposed, but rejected in the District Court Amendments (35-a to 37-a) lists what the Chief has done to his Wife, his family, his desire for children and his

reputation as a man in the small rural county of Beaver, Pennsylvania (Paragraph 1, 1-a).

a. Husband respectfully suggests his reputation as a man able to protect his Wife, himself, his home and his family has been destroyed by the Chief's outrageous conduct and

b. The intentional publishing by this Policeman who is protected from otherwise available self-help and court action by the government symbols of his gun, badge, can of mace and power of arrest (Paragraph 5-B, 2-a).

(i) When Don Wolf of the Beaver Times asked about what he was doing to Husband, the Chief arrogantly replied "one step in my life as a public official. I have nothing to hide. I have nothing to be ashamed of." (Paragraph 5-A, 2-a).

(ii) When this response was published in the Beaver Times, the Chief "openly boasted he is protected because of his friendship with John Antoline, the Mayor of his employer, Monaca Borough" (Paragraph 5-C, 2-a).

(iii) Not content with what he had done "the Chief called Wife a slut in public" (Paragraph 5-F, (11) (mm), 9-a) and "embarrassed Wife by announcing in public that she was pregnant" (Paragraph 5-F (11 (hh), 9-a).

(iv) When Husband asked him to stop, the Chief ignored him (Paragraph 5-F (11) (t), 7-a), got Wife a lawyer (Paragraph 5-F (11) (s), 7-a), took her to a lawyer

to get a divorce, (Paragraph 5-F (9), 5-a) and threatened him (Paragraph 5-F (15), 10-a).

(v) The Chief also "asked Wife not to be deposed" (Paragraph 5-F (11) (ss), 10-a) in order to prevent memorialization of what he had done and gave her "legal advice and also suggested a lawyer to do the same thing" (Paragraph 5-F (11) (u), 7-a).

c. Husband respectfully suggests his Wife's fear to herself move against the Chief (Paragraph 5-F (5), (6), 4-a; 5-F (11), 5-a; 5-F (11) (o), 6-a; 5-F (11) (aa), 8-a; 5-F (11) (jj), 9-a) should not be a barrier to him doing so and that when everyone who can read the Beaver Times and hear the boasting Chief knows about his failure to act, his honor, reputation, family and marriage require a court guaranteed remedy provided by civilized standards of conduct.

d. Husband respectfully requests the Supreme Court to advise that this case goes far beyond a mere tort or/and alienation of affections complaints and is 42 USC 1983 actionable.

e. The Random House Dictionary of the English Language at Page 1218 defines "reputation", inter alia, as "1. The estimation in which a person or thing is held, esp. by the community or the public generally".

(1) Who in Beaver County could respect a husband who does nothing to the man who has treated his wife and step-daughter as the complaint says the Chief has done?

(2) If Husband killed the Chief, he might be protected by the so-called "unwritten law".

(3) But his lawful attempts for relief do not so far appear to be protected by the written law.

4. Since the state courts have refused the remedies promised by the constitution and statutes of Pennsylvania, Husband respectfully now asks this disappointment and omission be corrected by the United States Courts which are asked to supply the missing remedy; *Granberry v. Greer*, April 21, 1987, ___U.S. ___, 107 S. Ct. 1671, 1676; *Groppi v. Wisconsin*, 1970, 400 U.S. 505, 511, 91 S. Ct. 490, 494; *Ham v. South Carolina*, 1973, 409 U.S. 524, 527, 93 S. Ct. 848, 850; *Bush v. Lucus*, 1983, 462 U.S. 367, N.10, 103 S. Ct. 2404, N.10; *Linn v. United Plant Guard Workers of America*, 1966, 383 U.S. 53, N.6, 86 S. Ct. 657, N.6 and *Duggett v. Kimmelman*, February 2, 1987, C.A.3, 811 F.2d 793, 800; *Marbury v. Madison*, 1803, 1 Cranch 137, 162, 2 L.Ed. 60.

5. "Whether acting through its judiciary or through its legislature, a state may not deprive a person of all existing remedies for the enforcement of a right, which the state has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it."; *Brinker-Hoff-Faris Trust and Savings Co. v. Hill*, 1930, 281 U.S. 673, 682, 50 S. Ct. 451, 454 (state judges take away remedy to protect property; federal court will supply it. "The federal guaranty of due process extends to state action through its judicial as well as through its legislative, executive or administrative branch of government," 281 U.S. at 681, 50 S. Ct. at 454.)

A. *Hudson v. Palmer*, 1984, 468 U.S. 517, 523, 104 S. Ct. 3194, 3198 (right of petition "includes a reasonable right to access to the courts"); *California Motor Transport Co. v. Trucking Unlimited*, 1972, 404 U.S. 500, 508, 92 S. Ct. 609, 612 ("Certainly the right to petition extends to all departments of the government. The right of access to the courts is indeed but one aspect of the right to petition").

B. Way back in 1819, the sanctity of the marriage contract received United States Supreme Court attention in the Article 1, Section 1 discussions of the *Trustees of Dartmouth College v. Woodward*, 4 Wheaton 518 at 696 ("A man has just as good a right to his wife, as to the property acquired under a marriage (697) contract. He has a legal right to her society and her fortune, and to divest such right without his default, and against his will, would be as flagrant a violation of the principles of justice, as the confiscation of his own estate. I leave this case, however, to be settled when it shall arise").

CONCLUSION

This United States Court of Appeals for the Third Circuit judgment order clearly sends a message that a Police Chief of Pennsylvania, in full armed uniform, can abuse Petitioner's Wife, threaten Petitioner personally for objecting, order him to stay out of the Policeman's municipality plus publicly brag about about it and that Petitioner has no state, federal or civil remedy for either equitable or money damage relief so that a Husband's only procedure is self-help directed physically or verbally

against the Police Officer who can respond with a bullet, club, mace or arrest.

Petitioner respectfully urges this Honorable Court to intervene in the problems detailed in his civil complaint and not abandon him to the community ridicule and scorn which has followed the Chief's conduct about which this Police Officer openly brags nothing can be done either at law or equity or in any other manner.

Petitioner respectfully suggests preservation of marriage, the family, personal security, the right to travel without restriction and reputation are matters of exceptional importance which should not be relegated to a no-touch category by the Courts.

Petitioner urges the United States Supreme Court to grant certiorari and reinstate his complaint.

Respectfully submitted,

/s/ Allen N. Brunwasser
Allen N. Brunwasser,
Esquire
Attorney for Petitioner

P. 0. Box 22212
Pittsburgh, PA 15222

412-391-0329

APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JOHN J. GRABNER, III
Plaintiff,

vs. 87-1545

LAWRENCE CONTI,
Defendant

CIVIL COMPLAINT

1. Plaintiff is a resident of Beaver County, Pennsylvania and the lawful Husband of Cecilia Grabner.

2. Defendant is a resident of Beaver County and at all times here relevant and presently the duly appointed Police Chief of Monaca Borough, Beaver County, Pennsylvania.

3. Jurisdiction is founded upon 28 USC 1331, 1334, 42 USC 1983 and the first, fifth, ninth and fourteenth amendments to the United States Constitution.

4. Plaintiff is now filing this suit in this Court because he has no remedy in the Courts of the Commonwealth of Pennsylvania.

A. Plaintiff relies on the reasoning of *Granberry v. Greer*, April 21, 1987, ___ US ___, ___, 107 S. Ct. 1671, 1676; *Groppi v. Wisconsin*, 1970, 400 US 505, 511, 91 S. Ct. 490, 494; *Ham v. South Carolina*, 1973, 409 US 524, 527, 93 S. Ct. 848, 850; *Bush v. Lucus*, 1983, 462 US 367, F.N. 10, 103 S. Ct. 2404, F.N.; *Linn v. United Plant Guard Workers of America*, 1966, 383 US 53, F.N. 6, 86 S. Ct. 657, F.N. 6; *Duggett v. Kimmelman*, February 2, 1987, C.A.3, 811 A.2d 793, 800.

B. Plaintiff's lack of a state remedy was not clearly disclosed until

(1) The United States Supreme Court denied certiorari on May 19, 1987 at #86-1609 in the trespass and equity cases originals filed in Beaver County Common Pleas Court at #2614 and #2613 of 1981 and

(2) The Pennsylvania Supreme Court denied review on June 23, 1987 at 390 W. D. Allocatur Docket 1986 in Plaintiff's discipline case originally filed at #266 of 1984 in the Court of Common Pleas of Beaver County, Pennsylvania.

5. At all times here relevant, Defendant was acting under color of law and taking advantage of his posture as Police Chief of said Monaca Borough, Pennsylvania. In fact,

A. When Defendant discussed his conduct with Don Wolf of the Beaver Times Harrisburg Bureau on or about April 8, 1986 he said he accepts the lawsuit as "one step in my life as a public official. I have nothing to hide. I have nothing to be ashamed of" and

B. Plaintiff was afraid to deal with Defendant directly because he carried a gun and badge and had the power to shoot to wound or kill plus the power of arrest and

C. Defendant openly boasted he is protected because of his friendship with John Antoline, the Mayor of his employer, Monaca Borough and

D. Defendant warned Plaintiff to stay out of Monaca Borough because if he did not, he would be arrested.

E. Defendant appeared in many events of this case dressed in full uniform and operating an official police vehicle.

6. Plaintiff is denied and cannot enforce his legal, civil rights in the Pennsylvania State Courts which have denied all relief.

7. Defendant has abused Plaintiff and his Wife in the following manner:

A. Plaintiff is a resident of the County of Beaver and the legally married Husband of Cecelia Ann Grabner (Wife).

B. Lawrence Conti (the Chief) is a resident of the County of Beaver and also the duly appointed Police Chief of Monaca Borough.

C. Anteline Pendel (Sister) is a resident of Allegheny County and Sister of Wife.

D. Plaintiff and Wife were married on August 7, 1981 in Hawaii.

E. The Chief knew of this marriage shortly after its consummation and also knew Plaintiff was the Husband.

F. Beginning from the time Plaintiff and Wife returned home from Hawaii to the marital home in Beaver, the Chief began a cause of conduct both intended to satisfy his own amorous and sexual desires with Wife and to break up the said marriage, some of which conduct is described as follows:

(1) About three weeks after the return, he visited Wife at the home of her Mother, talked to her,

touched her physically, put his hands on her shoulders and his arms around her waist, asked her to do the same to him and said he still cared and could not believe she was married.

(2) Shortly thereafter he appeared at the St. Anthony's Club in Midland and invited her to go to Sister's house for a 2:30 AM breakfast when he knew she was married and living with Plaintiff.

(3) At that time, the Chief told her he still cared and hugged and squeezed her, held her hand and put his arm around her.

(4) About a week later, the Chief showed up at Wife's Mother's house with Sister when he knew Plaintiff would be there and embarrassed her before her Niece, Nephew and the family.

(5) On August 27, 1981, Wife called the Chief to ask him to let her alone, especially because Plaintiff objected, but he refused.

(6) The Chief admitted to Wife that he had given his ex-Wife severe beatings including breaking one's arm as a warning in re how violent he could become if he did not get his own way.

(7) In about a week after the above phone call, the Chief came to see Wife at Sister's home at which time he criticized Plaintiff's conduct toward Wife.

(8) At that time and place, the Chief held Wife's hand and put his arm around her and suggested an attorney, Mr. Martucci, so she could get a divorce and told her how to get to the Attorney's office.

(9) When Wife went to the office of Attorney Martucci, Attorney Joe Budicak, who is in Mr. Martucci's office, was there to take the divorce case and the Chief gave him high recommendations.

(10) While Wife was still married to Plaintiff, the Chief had sexual relations with her, which conduct began sometime shortly after Halloween, 1981, and continued mostly at his house.

(11) The Chief became very unpleasant when Wife tried to break off the above described relationship and beat her severely to show his displeasure and get her to change her mind; and one time at the Policeman's Ball in Philadelphia for merely talking to another man and his female companion,

(a) He pulled her up the steps to the room which they both had occupied and had sexual intercourse;

(b) Slapped her face hard to hurt her;

(c) Knocked her over the bed;

(d) Bounced her off the walls;

(e) Hit her head against the door so hard that a large lump developed;

(f) Bruised her chin and cheeks with his fists;

(g) Beat and bruised her all over her body;

(h) Told her "Maybe that will teach you a lesson";

(i) Told her she belonged to him as his "personal property";

(j) Ripped up a phone number which she wanted to call to escape him and said she was not leaving;

(k) Imprisoned her in the said room under threat of another beating like the one described above which lasted 15 minutes;

(l) At all times described in re the beating, the Chief was on official duty and his expenses at the Marriott Hotel, City Line, Philadelphia, Pennsylvania paid by his employer, Monaca Borough;

(m) When the Chief was pounding Wife's head, he knew she had a tumor in it;

(n) When Wife said she wanted to join her minor Daughter in Reading, Pennsylvania and return home to Beaver with her, the Chief refused to let her do so and indicated she would receive another beating if she tried;

(o) Wife was afraid to leave both because of the above beating and the Chief's bragging about giving his other women beatings.

(p) The Chief was possessive, jealous and bad tempered.

(q) He admitted to Wife that while a Monaca Policeman, he had beaten both his former wives plus his live-in maid, Janice, with whom he also had sexual relations, and required her to "help out with the house payment from her earnings."

(r) Also, the Chief's Daughter told Wife she too had received beatings from the Chief.

(s) When Wife went to a December 6, 1983 deposition in this case, the Chief wanted her to get his lawyer to represent her.

(t) The Chief ignored Plaintiff's request to let his Wife alone, which request was made in August 1981.

(u) The Chief gave Wife legal advice and also suggested a lawyer to do the same thing.

(v) The Chief attemped to break up Plaintiff's marriage and told her not to wear her wedding ring.

(w) The Chief constantly made Wife account for her time.

(x) The Chief stayed overnight at Wife's home and made love to her while her 16 year old Daughter was also there.

(y) When Wife stayed overnight at the Chief's home, he knew her 16 year old Daughter would be home alone and that what he did was the crime of contributing to a minor's delinquency.

(z) The Chief forced Wife to clean his home, shop and cook for him, all without pay when he knew this work, in addition to her other obligations was driving her to physical exhaustion which might cause her to become ill.

(aa) In the Winter of 1982, the Chief gave Wife a severe beating after trying to force herself,

against her desires, into her home. At that time, he also damaged her clothes and jewelry and only stopped when a neighbor told him she was going to call the Beaver Police, all of which prevented him from forcing Wife into her house where he was so he could beat her. The Chief finally left Wife's house after she entered and ran upstairs to escape him and only because the neighbor promised to call said Beaver Police.

(bb) Chief also beat Wife at the Baden, Pennsylvania V.I.P. night club by giving her a "stooge" in the face under the nose because she was talking to a doctor and then warned her never to talk to any man if he was not there to listen.

(cc) The Chief also made Wife pregnant when he knew this plus her tumor could endanger her health by refusing to use or let her use anything to prevent it.

(dd) The Chief then forced Wife to continue sex against her desires and without protection against pregnancy.

(ee) The Chief insisted on having sex with Wife after her abortion and before he knew it was not allowed.

(ff) As a result and to protect herself, Wife had her tubes tied, as a result of which she and Plaintiff can't have any children, even though Plaintiff wants children.

(gg) One reason Wife had her tubes tied is that the Chief said he wanted to have a baby with her.

(hh) The Chief embarrassed Wife by announcing in public that she was pregnant.

(ii) When Wife would fall asleep, Chief would wake her up even though he knew she had to go to work that morning.

(jj) The above conduct has caused Wife to fear the Chief which he wanted so she would do as he said.

(kk) The Chief drove slowly in front of a friend's house where Wife was a visitor in order to show his displeasure that she was there.

(ll) The Chief entered Wife's house when she was absent and took back all the gifts he had given her and as punishment for visiting, supra, and again he saw her with a fellow female employee he took what he had left the first time.

(mm) The Chief called Wife a slut in public.

(nn) The Chief, at 5:00 AM, on August 6, 1983 in the morning removed a flower bed and table he had given her from her lawn.

(oo) On the morning when the Chief took the flower bed and table, he ran his truck across Wife's lawn to create furrows.

(pp) Wife feared that if she was home, the Chief would have given her another beating.

(qq) When Wife told the Chief she was ending the relationship, he wished her bad luck and

punishment in order to frighten her into continuing the relationship.

(rr) The Chief insisted Wife return to her house in a Beaver police car and return the presents, wedding dress and ring to Plaintiff, all before the marriage.

(ss) The Chief asked Wife not to be deposed.

(ss) The Chief sold a microwave oven Plaintiff's parents gave them as a wedding gift and kept the money.

(tt) The Chief physically abused Wife when she refused to go with him to Las Vegas where he had been a bouncer, and locked her in the basement of his Mother's home in order to try to have her change her mind.

(12) Sister cooperated with the Chief in his attempts to encourage Wife to end her marriage with Plaintiff and to continue the involvement with him.

(13) All of the above is not only conduct unbecoming a police officer but a nuissance and a continuing trespass.

(14) Plaintiff is fearful the Chief will continue his conduct in furtherance of his desire to end Plaintiff's marriage and begin again his relationship with Wife.

(15) The Chief has also made threats to Plaintiff and Plaintiff is afraid he will carry them out.

8. Plaintiff's request for damages, filed in Beaver County Common Pleas Court at #2614 of 1981 and his request for equitable relief filed there at #2613 of 1981 have been denied because there is no Pennsylvania remedy and the decisions affirmed by the Superior Court of Pennsylvania at Nos. 44, 45, 143 and 223 Pgh 85 and review declined by the Pennsylvania Supreme Court at #129 W.D. Allocatur Docket 1986 on January 5, 1987.

9. Plaintiff's request the Mayor and Councilmen of Monaca Borough investigate the Defendant's conduct was originally denied in Beaver County Common Pleas Court at #266 of 1984 and the decision affirmed by the Commonwealth Court of Pennsylvania at #25 T.D. 1985 and review denied by the Pennsylvania Supreme Court at #390 W.D. Allocatur Docket 1986 for the reason that Plaintiff has no Pennsylvania remedy.

10. *Plaintiff demands a Jury Trial.*

Respectfully Submitted,

/s/ Allen N. Brunwasser
Allen N. Brunwasser
Attorney for Plaintiff

P.O. Box 22212
Pittsburgh, PA 15222

412-391-0329

AFFIDAVIT

Personally appeared John J. Grabner III who avers the facts in this Civil Complaint are true and correct under penalty of perjury and false swearing.

/s/ John J. Grabner III

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JOHN J. GRABNER, III,	)	
Plaintiff,	)	
vs.	)	Civil Action No. 87-1545
LAWRENCE CONTI,	)	
Defendant.	)	

MEMORANDUM OPINION

BLOCH, District J.

Plaintiff brings this action pursuant to 42 U.S.C. § 1983, claiming that the defendant, the Police Chief of the Borough of Monaca, Pennsylvania, has "abused" plaintiff by making amorous advances toward plaintiff's wife. The complaint further alleges that defendant has encouraged plaintiff's wife to end her marriage to plaintiff.

Defendant has filed a motion to dismiss the complaint for failure to state a cause of action. Fed. R. Civ. P. 12. In addressing a motion to dismiss, the "issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims. Indeed it may appear on the face of the pleadings that a recovery is very remote and unlikely, but that is not the test. Moreover, it is well established that, in passing on a motion to dismiss, . . . the allegations of the complaint should be construed favorably to the pleader." *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

In order to establish a claim under § 1983, the plaintiff must establish three elements: first, that the conduct complained of was committed by a person acting color of

state law; second, that this conduct deprived the plaintiff of rights, privileges or immunities guaranteed by the federal constitution; and, third, that the defendant's actions were the proximate cause of the injuries sustained by the plaintiff. *Parratt v. Taylor*, 451 U.S. 527 (1981).

Viewed in the light most favorable to the plaintiff, the complaint fails to state a cause of action under § 1983. Specifically, the complaint is utterly devoid of reference to a deprivation of rights, privileges or immunities guaranteed by the Constitution of the United States. At best, the complaint states a cause of action for alienation of affections, a common law tort. It is well established that not every common law tort, even if committed by an individual acting under color of law, is actionable under § 1983. *Paul v. Davis*, 424 U.S. 693 (1976); *Howell v. Cataldi*, 464 F.2d 272 (3d Cir. 1972).

In *Paul v. David*, the Supreme Court held that the federal constitution does not automatically extend to a person the right to be free of all injury wherever a state actor may be characterized as the tort feasor. To construe § 1983 as permitting a litigant to frame a state law tort action in federal constitutional terms would be equivalent to imposing upon the state common law systems a "body of general federal tort law" which derives from congressional civil rights statutes, in controvention of basic principles of federalism. 424 U.S. 700-01.

At best, plaintiff's complaint states a common law cause of action for alienation of affections. Title 42 U.S.C. § 1983 does not encompass such a claim. Therefore, defendant's motion to dismiss will be granted.

An appropriate Order will be issued.

Date: 10/2/87 /s/ Alan Bloch
United States District Judge

cc: Counsel of record.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JOHN J. GRABNER, III,	)	
Plaintiff,	)	
vs.	)	Civil Action No. 87-1545
LAWRENCE CONTI,	)	
Defendant.	)	

JUDGMENT ORDER

AND NOW, this 2nd day of October, 1987, upon consideration of Defendant's Motion to Dismiss filed in the above captioned matter on August 19, 1987,

IT IS HEREBY ORDERED that said Motion is GRANTED.

/s/ Alan Bloch
United States District Judge

cc: Allen N. Brunwasser, Esquire
P.O. Box 22212, Pittsburgh, PA 15222

Nick Francalancia, Esquire
1040 Third Street, Beaver, PA 15009

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JOHN J. GRABNER, III,
Plaintiff,
vs. C.A. #87-1545
LAWRENCE CONTI,
Defendant

MOTION FOR REARGUMENT, RECONSIDERATION AND TO AMEND THE OCTOBER 2, 1987 ORDER

TO THE HONORABLE, ALAN N. BLOCH,
UNITED STATES DISTRICT JUDGE:

1. Plaintiff moves to have the October 2, 1987 order vacated.

2. The Court is respectfully requested to read and consider incorporated into this Motion Plaintiff's motion to amend which is being filed in tandem with this motion.

3. Plaintiff respectfully suggests if the Court reads the cases cited as alleged authority to dismiss this case, it will discover they actually support the case.

4. In addition, *Parrott v. Taylor*, 451 US 527 has been overruled by the United States Supreme Court insofar as it suggests mere negligence is sufficient as a constitutional violation. However, intentional conduct to harm Plaintiff is 42 USC 1983 protected.

5. Plaintiff also requests discovery before his case is dismissed so he can attempt to prove Defendant's intent as an admitted fact instead of relying upon permitted

inferences; *Chipallini v. Spencer Gifts, Inc.*, 1987, C.A.3, en banc, 10 Judges, 814 F.2d 893; *Sorba v. Pa. Drilling Co., Ind.*, June 18, 1987, C.A.3, 821 F.2d 200, 203.

6. The Court is also requested to evaluate *Mayberry v. Petsock*, June 15, 1987, C.A.3, 821 F.2d 179, 183 (state remedies futile); *Ohio Civil Rights Commission v. Dayton Christian Schools, Inc.*, 1986, 106 S. Ct. 2718, 2723 (failure of state to provide plaintiff "full and fair opportunity to litigate his constitutional claim".

WHEREFORE, Plaintiff requests reconsideration, reargument and that the October 2, 1987 order judgment be vacated.

Respectfully Submitted,

/s/ Allen N. Brunwasser
Allen N. Brunwasser
Attorney for Plaintiff

P.O. Box 22212
Pittsburgh, PA 15222

412-391-0329

CERTIFICATION OF SERVICE

On October 11, 1987, copy mailed to Nick Francalancia, Esquire, 1040 Third Street, Beaver, PA 15009.

/s/ Allen N. Brunwasser
Allen N. Brunwasser

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JOHN J. GRABNER, III,
Plaintiff,
vs.
LAWRENCE CONTI, C.A. #87-1545
Defendant

MOTION TO AMEND CIVIL COMPLAINT

TO THE HONORABLE, ALAN N. BLOCK, UNITED STATES DISTRICT JUDGE:

As authorized by F.R.C.P. 15(a), Plaintiff respectfully requests leave to amend his original complaint in the following respects:

1. There shall be added to the original complaint the following additional averments: "Paragraph 11. Plaintiff believes and thus avers all action of Defendant was taken intentionally, wickedly, willfully and wontonly and

A. With the specific intent to deprive Plaintiff of rights protected by the first, fourth, fifth, eighth, ninth and fourteenth amendments to the constitution of the United States.

B. Plaintiff has an absolute federal and state constitutional right to be married, have children and a wife for himself and a mother for his children.

C. Defendant's intentional conduct in forcing Plaintiff's wife to have unprotected against pregnancy

sexual intercourse caused her, as he knew it would, to have her tubes tied so she could no longer bear children.

D. This intentional conduct, resulted in Plaintiff's loss of his federal and state constitutional rights to be a father.

E. Defendant's intentional conduct to destroy Plaintiff's marriage resulted in loss of his federal and state constitutional rights to be married and have a home and a family.

F. Plaintiff believes and thus avers Defendant's intentional conduct is actionable within the reasoning of

(1) *Paul v. Davis*, 1976, 424 US 693, 712, 96 S. Ct. 1155, 1166 ("Marriage - family relationship" are liberty interests).

(2) *Appeal of City of Philadelphia*, February 17, 1987, C.A.3, 812 F.2d 105, 109 ("matters related to marriage, contraception, family relationships and child rearing" protected as liberty rights).

(3) *Daniels v. Williams*, 1986, 106 S. Ct. 662 (intent to harm goes beyond state tort and rises to 42 USC 1983 violation).

(4) *Whitley v. Albers*, 1986, 106 S. Ct. 1078, 1084 (Wanton, intentional conduct rises beyond state tort to constitutional violation).

(5) *Davidson v. Cannon*, 1986, 106 S. Ct. 668, 670 (deliberate and callous indifference goes beyond mere tort, 489 F.2d 516, C.A.3, 1973 approved).

(6) *Labou v. Lalley*, 1987, C.A.3, 809 F.2d 220, 223 (dismissal standards discussed; "intentional deprivations of federal substantive liberty interests protected-"; limited state remedies no substitute for 42 USC 1983 more complete remedies).

(7) *Sour Beer v. Robinson*, 1986, C.A.3, 791 F.2d 1094, 1104 (intentional conduct rises beyond mere state tort to federal constitutional violation).

(8) *Curtis v. Everette*, 1973, C.A.3, 489 F.2d 516, 518, C.D. 416 US 995, 99 S. Ct. 1151, approved in Davidson, supra (42 USC 1981 and 1983 covers intentional conduct; quotes lifted from *Howell v. Cataldi*, 1972, C.A.3, 464 F.2d 272, 281 and dismissal standards explained; brutal conduct is 42 USC 1983 actionable).

(9) *Meyer v. Nebraska*, 1922, 262 US 390, 399, 43 S. Ct. 625, 626 (protected liberty interests covers "-not merely freedom from bodily restraint but also the right of the individual to contract, -- to marry, establish a home and bring up children-".

(10) *Howell v. Cataldi*, 1972, C.A.3, 464 F.2d 272, 275 (wrongful intent to harm rises to 42 USC 1983 compensable conduct; non-police Plaintiff has no effective out of court remedy against police abuse as to resist is a state crime; federal courts "may use any available remedy to make good the wrong done"; tort can also be civil rights violation if it offends "the dignity of man", "developing concepts of elemental decency"; is "beyond the pale")."

WHEREFORE, Plaintiff respectfully requests leave to amend.

Respectfully Submitted,

/s/ Allen N. Brunwasser
Allen N. Brunwasser
Attorney for Plaintiff

P.O. Box 22212
Pittsburgh, PA 15222

412-391-0329

CERTIFICATION OF SERVICE

On October 13, 1987, copy mailed to Nick Francalancia, Esquire, 1040 Third Street, Beaver, PA 15009.

/s/ Allen N. Brunwasser
Allen N. Brunwasser

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JOHN J. GRABNER, III,	)	
Plaintiff,	)	
vs.	)	Civil Action No. 87-1545
LAWRENCE CONTI,	)	
Defendant.	)	

ORDER

AND NOW, this 14th day of October, 1987, upon consideration of Plaintiff's Motion for Reargument, Reconsideration, and to Amend the October 2, 1987 Order filed in the above captioned matter on October 13, 1987, IT IS HEREBY ORDERED that said Motion is DENIED.

AND, further, upon consideration of Plaintiff's Motion to Amend Civil Complaint filed in the above captioned matter on October 13, 1987, IT IS HEREBY ORDERED that said Motion is DENIED.

/s/ Alan Broch
United States District Judge

cc: Allen N. Brunswasser, Esquire
P.O. Box 22212, Pittsburgh, PA 15222

Nick Francalancia, Esquire
1040 Third Street, Beaver, PA 15009

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JOHN J. GRABNER, III,
Plaintiff

vs. C.A. #87-1545

LAWRENCE CONTI,
Defendant

NOTICE OF APPEAL

John J. Grabner, III, appeals from the October 2, 1987 and October 14, 1987 orders of United States District Judge Alan N. Bloch to the United States Court of Appeals for the Third Circuit.

/s/ Allen N. Brunwasser
Allen N. Brunwasser
Attorney for Plaintiff
P.O. Box 22212
Pittsburgh, PA 15222
412-391-0329

I HEREBY CERTIFY THE WITHIN TO BE A
TRUE AND CORRECT COPY OF THE ORIGINAL
FILED IN THIS CASE

_____
ATTORNEY

TO THE HONORABLE, THE CHIEF JUDGE AND THE ASSOCIATE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT:

John J. Grabner, III, Appellant, respectfully moves for rehearing and rehearing in banc based on the following:

1. On May 27, 1988, this Court's Clerk advised this case would be submitted pursuant to Rule 12 (6) for a June 14, 1988 decision.

2. On June 17, 1988, a panel composed of Mansmann, Scirica and Cowen, Circuit Judges, entered the attached judgment order which affirmed District Judge Alan N. Block, who had dismissed the case on October 2, 1987 at C.A. #87-1545 in the United States District Court for the Western District of Pennsylvania and denied reconsideration, reargument and amendment on October 14, 1987.

3. This judgment order clearly sends a message that a Police Chief of Pennsylvania, in full armed uniform, can abuse Appellant's Wife, threaten Appellant personally for objecting, order him to stay out of the Policeman's municipality plus publicly brag about it and that Appellant has no state, federal or civil remedy for either equitable or money damage relief so that a Husband's only procedure is self-help directed physically or verbally against the Police Officer who can respond with a bullet, club, mace or arrest.

4. Appellant respectfully urges a new decision that the June 17, 1988 panel judgment order is contrary to *Appeal of Baranyai*, 1981, C.A.3, 659 F.2d 306 (in banc, 8 Judges); *Hague v. Committee for Industrial Organization*,

1983, C.A.3, 101 F.2d 774, modified and reversed on other grounds, 59 S. Ct. 954, 307 US 496; *Griffin v. Breckenridge*, 1971, 403 US 88, 105-106, 91 S. Ct. 1790, 1800; *Black v. Stephens*, 1981, C.A.3, 662 F.2d 181, 185-189, C.D. 102 S. Ct. 1646, 455 US 1008 plus the other cases cited in Appellant's Brief.

5. Appellant also respectfully asks this Honorable Court to evaluate application of *Appeal of Metzger*, March 11, 1988, C.A.3, 841 F. 2d 518 (decided and reported after his Brief was filed) plus *Copeland v. Phila. Police Dept.*, March 7, 1988, C.A.3, 840 F.2d 1139, 1148 (reputation a liberty interest if plaintiff proves publication).

6. Appellant respectfully requests the Court in banc to reexamine this area of the law as it said it could in *Appeal of Kahlowsky*, April 8, 1988, C.A.3, 843 F.2d 1537, 1538 (in banc reexamination of S.E.C. Section 10(b) statue of limitations issue not limited by previous inconsistent panel decision).

7. Appellant respectfully urges this Honorable Court not to reject his right asserted in his complaint by not providing a remedy; *Bush v. Lucus*, 1983, 462 US 367, N.10, 103 S. Ct. 2404, ___, N.10; *Linn v. United Plant Guards of America*, 1966, 383 US 53, N.6, 86 S. Ct. 657, N.6.

8. Appellant respectfully urges this Honorable Court to intervene in the problems detailed in his civil complaint and not abandon him to the community ridicule and scorn which has followed the Chief's conduct

about which this Police Officer openly brags nothing can be done either at law or equity or in any other manner.

Respectfully Submitted,

/s/ Allen N. Brunwasser
Allen N. Brunwasser, Attorney for Appellant

P.O. Box 22212
Pittsburgh, PA 15222

412-391-0329

STATEMENT OF COUNSEL

I express a belief, based on a reasoned and studied professional judgment, that the Panel decision is contrary to decisions of the United States Court of Appeals for the Third Circuit or the Supreme Court of the United States, and that consideration by the full Court is necessary to secure and maintain uniformity of decisions in this Court, to-wit, the Panel's decision of this Court is contrary to the decisions of this Court or the Supreme Court cited supra in this petition and also those cited in Appellant's Brief.

In addition, if this is not so, Appellant respectfully urges this Honorable Court to reverse the law in this circuit and/or, if this cannot be done, recommend to the United States Supreme Court that the change be made there.

Appellant respectfully suggests preservation of marriage, the family, personal security, the right to travel without restriction and reputation are matters of

exceptional importance which should not be relegated to a no-touch category by the Courts.

/s/ Allen N. Brunwasser
Allen N. Brunwasser, Esquire
Attorney for Appellant

CERTIFICATION OF SERVICE

On the 29 day of June, 1988, copy mailed to Nick Francalancia, Esquire, 1040 Third Street, Beaver, PA 15009.

/s/ Allen N. Brunwasser
Allen N. Brunwasser

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 87-3740

JOHN J. GRABNER, III
Appellant

v.

LAWRENCE CONTI

Appeal from the United States District Court
for the Western District of Pennsylvania
D.C. Civil Action No. 87-1545
(Honorable Alan N. Bloch)

Submitted June 14, 1988

Before: MANSMANN, SCIRICA AND COWEN,
Circuit Judges

JUDGMENT ORDER

After consideration of all contentions raised by appellant, it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby AFFIRMED.

Costs taxed against appellant.

BY THE COURT,

/s/ Illegible
Circuit Judge

June 17, 1988
Attest:

M. Elizabeth Ferguson
Chief Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 87-3740

JOHN J. GRABNER, III
Appellant
v.
LAWRENCE CONTI

(D.C. Civ. No. 87-1545)

SUR PETITION FOR REHEARING

Present: GIBBONS, *Chief Judge*, SEITZ, HIGGINBOTHAM, SLOVITER, BECKER, STAPLETON, MANSMANN, GREENBERG, HUTCHINSON, SCIRICA and COWEN, *Circuit Judges*.

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular service not having

voted for rehearing, the petition for rehearing by the panel and the Court in banc, is denied.

BY THE COURT,

/s/ Illegible
Circuit Judge

Dated: Jul 12 1988